IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

EARL E. YATES, a single person, Appellant, v. JANE C. ELLIS, a single person, Respondent.	No. 37143-0-II UNPUBLISHED OPINION

Van Deren, C.J. — Earl Yates appeals the trial court's summary judgment in favor of Jane Ellis based on expiration of the statute of limitations in his action for unjust enrichment. He argues that the trial court erroneously found that the three year statute of limitations expired more than three years before he filed his law suit. We hold that the trial court erred in granting summary judgment and reverse and remand for further proceedings.

FACTS[1]

Yates and Ellis have been acquaintances for more than 25 years. In 1981, they had a romantic relationship for approximately one year but, since 1981, the relationship has been "more

[1] Although the parties seem to dispute few of the recited facts, for purposes of this decision we consider all facts and reasonable inferences therefrom in the light most favorable to Yates, the nonmoving party. *Hertog v. City of Seattle*, 138 Wn.2d 265, 275, 979 P.2d 400 (1999).

of a friendship relationship."[2] Clerk's Papers (CP) at 80. Both parties have contributed labor and gifts to the other throughout their relationship.

In 1991, Ellis purchased waterfront property in Quilcene, Washington. She began constructing a log home on the property in 1995 or 1996. In 1998, Yates and Ellis purchased a home in Bridgehaven, Jefferson County, apparently so they could live closer to the construction site at Quilcene.[3]

In January or February 1998, Ellis promised Yates that she would give him a one-half interest in her Quilcene property in exchange for his assistance in building the log home.[4] Ellis said to Yates:

> "You know, this is your project too." She said, "I want you involved."
> And [Yates] said, "Well, I don't really think that's a good idea because I'm concerned about my health."
> And [Ellis] said, "Oh, that won't be a problem." She said, "I want you to be involved and I'll give you a half-interest in the property."

CP at 14-15. In reliance on this promise, Yates began using his money and labor to clear the land and construct the log home. In his deposition, Yates stated that Ellis's conveyance to him of a one half interest in the property "came up several times in the next two, two and a half years" but "she didn't ever say, 'I promise to give you a half interest' other than that first conversation in early 1998." CP at 15-16.

---

[2] Yates claims the romantic relationship lasted until 1987.

[3] Because Ellis remained in the Bridgehaven property after Yates moved out on May 11 or 12, 2001, Yates claims that Ellis owes him the fair rental value. The Bridgehaven property was also the subject of a counter-claim for partition against Yates; that claim has been settled.

[4] Ellis conceded that she promised Yates a one-half interest in the Quilcene property for purposes of her motion on summary judgment.

From 1998 to 2001, Yates contributed approximately $116,000 to develop the property.[5] Yates also maintains that he contributed home expenses, travel expenses, and approximately 600 hours of labor. He demanded that Ellis execute a quit claim deed "so many times that [he] can't recall any specific dates." CP at 21. Each time Yates demanded that Ellis actually execute a deed conveying a one half interest, Ellis would start to cry and would tell Yates that he was "'putting pressure on [her].'" CP at 20. Ellis never gave Yates a quit claim deed conveying any interest in the property.

On May 11 or 12, 2001, Yates again asked Ellis to execute a quit claim deed conveying his one half interest in the Quilcene property. In response, Ellis "started crying and talking about too much pressure and all of that." Yates "packed up [his] belongings" and told Ellis that he would "work up what [he had] put into the log home." CP at 104. He said he would return on Monday. On May 15,[6] Yates "met with Ms. Ellis on the [Quilcene] property and provided her with a detailed accounting of the money that [he] had spent. [He] told her at that time that [he] needed her commitment completing her promise that [he] was to be an owner of a one-half interest in the property." In response, Ellis told Yates "to get [his] belongings, get off the property, and not return." CP at 75.

Yates filed an action for unjust enrichment against Ellis on May 13, 2004. He requested approximately $116,000 plus interest for his payment of construction costs related to the Quilcene

[5] Ellis stated in her deposition that all of Yates's contributions were voluntary and that she considered them to be gifts. Her claim may be considered during trial on Yates's unjust enrichment claim.

[6] Yates refers to May 15, 2001 as a Monday, however, May 15 fell on a Tuesday in 2001.

property, plus over $77,000 for home expenses, travel expenses, one half of the Bridgehaven property's rental value, and labor performed on the Quilcene property.

Ellis moved for summary judgment based on the three year statute of limitations applicable to unjust enrichment claims. She claimed that all of Yates's alleged financial contributions had been paid before January 2001, that the statute of limitations on Yates's unjust enrichment claim accrued at the time of the last payment, and, thus, his claim was time barred.

The trial court interpreted the interactions between Yates and Ellis as Yates

> asked [for the deed] a number of times, he says, "Too many times to count." Sign the quit claim deed. Sign the quit claim deed. Give me half the property, in effect. And she says "No, I'm not going to do it." Many, many, many times, she says, "No, I'm not going to."

Report of Proceedings (RP) at 19. In reliance on its belief that Ellis expressly refused to execute a quit claim deed to Yates, the trial court found:

> [T]he cause of action accrues as soon as Mr. Yates realizes that [Ellis has] been unjustly enriched; i.e., as soon as she says, "No, I'm not going to make you a half owner of this property," and which she did for a period of a year or so leading up to 2001.

RP at 20. Based on this reasoning, the trial court granted Ellis's motion for summary judgment. Yates unsuccessfully moved for reconsideration.

Yates appeals.

ANALYSIS

Yates contends that the trial court erred in granting Ellis's motion for summary judgment. He argues that the three year statute of limitations did not begin to run until May 15, 2001, because, until that date, "there was nothing inequitable about [Ellis] receiving or retaining" the

benefits he conferred on her. Br. of Appellant at 12.

Ellis argues that Yates's claim began to accrue either (1) at the time of his last financial contribution or (2) when Ellis failed to execute a quit claim deed before May 15, 2001. She argues that Yates's claim against her accrued "no later than May 11, 2001," because Yates said that he would leave and create an accounting of his contributions on that date, implying that he would no longer be asking for a quit claim deed. Br. of Resp't at 17 (emphasis omitted). We agree with Yates and reverse the trial court's order granting summary judgment to Ellis.

I. Standard of Review

We review an order on summary judgment de novo, performing the same inquiry as the trial court. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998). We consider all facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. *Hertog v. City of Seattle*, 138 Wn.2d 265, 275, 979 P.2d 400 (1999). Summary judgment is appropriate where "the pleadings, affidavits, and depositions establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300-01, 45 P.3d 1068 (2002); CR 56(c).

We review legal questions de novo. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.23d 369 (2003). "Whether the statute of limitations bars a suit is a legal question, but the jury must decide the underlying factual questions unless the facts are susceptible of but one reasonable interpretation." *Goodman v. Goodman*, 128 Wn.2d 366, 373, 907 P.2d 290 (1995).

II. Unjust Enrichment Claim Accrual

Three elements must be established in order to sustain a claim based on

> unjust enrichment, the claimant must establish: [(1)] a benefit conferred upon the defendant by the plaintiff; [(2)] an appreciation or knowledge by the defendant of the benefit; and [(3)] the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value.

Bailie Commc'ns, Ltd. v. Trend Bus. Sys., Inc., 61 Wn. App. 151, 159-60, 810 P.2d 12 (1991) (quoting Black's Law dictionary 1535-1536 (6th ed. 1990)). "A person has been unjustly enriched when he has profited or enriched himself at the expense of another contrary to equity." "Enrichment alone will not trigger the doctrine; the enrichment must be unjust under the circumstances and as between the two parties to the transaction." *Dragt v. Dragt/DeTray, LLC*, 139 Wn. App. 560, 576, 161 P.3d 473 (2007), *review denied*, 163 Wn.2d 1042 (2008).

Both parties agree that, under RCW 4.16.080(3), unjust enrichment claims have a three year statute of limitations. Yates filed his action for unjust enrichment against Ellis on May 13, 2004.

Ellis argues that the statute of limitations began accruing at the date of Yates's last monetary payment; alternatively, she argues that the statute of limitations began accruing on May 11, 2001, when Yates informed her that he would create an accounting of the contributions he had made to the property. Both of Ellis's arguments fail.

First, conferring a benefit does not complete an action for unjust enrichment. In order to bring a claim for unjust enrichment, the benefit must be retained unjustly. *Dragt*, 139 Wn. App. at 576. Second, the benefit cannot be unjustly retained through Yates's actions. It was Ellis's actions on May 15, when she ordered Yates off the premises and directed him not to return and also apparently refused to pay him for his accumulated contributions, that caused the action for

unjust enrichment to begin accruing. Only at that point did Yates's claim against Ellis become apparent because only then did Ellis make it clear she intended to retain all benefits Yates conferred without compensating him.

The trial court correctly stated that "the cause of action accrues as soon as Mr. Yates realizes that [Ellis has] been unjustly enriched; i.e., as soon as she says, 'No, I'm not going to make you a half owner of this property.'" RP at 20. As in general contract law, "a court will not infer repudiation from 'doubtful and indefinite statements that performance may or may not take place.'" *Alaska Pac. Trading Co. v. Eagon Forest Prods., Inc.*, 85 Wn. App. 354, 365, 933 P.2d 417 (1997) (quoting *Wallace Real Estate Inv., Inc. v. Groves*, 124 Wn.2d 881, 898, 881 P.2d 1010 (1994)). Rather, the law requires "'positive statement or action by the promisor indicating distinctly and unequivocally that he either will not or cannot substantially perform any of his contractual obligations.'" *Wallace Real Estate Inv., Inc.*, 124 Wn.2d at 898 (internal quotation marks omitted) (quoting *Olsen Media v. Energy Sciences, Inc.*, 32 Wn. App. 579, 585, 648 P.2d 493 (1982)).

Here, the trial court incorrectly found that Ellis's excuses and delays and her hesitation in response to Yates's numerous requests before 2001 constituted an unequivocal refusal. Ellis's ambiguous responses to Yates's demands that she compensate him for his contributions by executing the deed she promised him conveying a one half interest in the Quilcene property were insufficient to support an inference of clear repudiation of her promise. Ellis did not make an affirmative statement regarding her intent to breach the oral promise that Yates relied on for several years until she ordered Yates to leave the property and never return.

Therefore, because Yates could not and did not know that Ellis intended to retain the benefit of his contributions until Ellis unequivocally rejected his claim to an interest in the property or reimbursement, the statute of limitations did not begin to accrue until Ellis made her intent clear. On the record before us, Ellis did that on May 15, 2001. Yates filed his unjust enrichment claim on May 13, 2004, within the three year statute of limitations; thus, the trial court erred in dismissing Yates's lawsuit against Ellis.

We reverse the trial court's order granting summary judgment to Ellis based on the expiration of the statute of limitations and remand for further proceedings.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Van Deren, C. J.

We concur:

Quinn-Brintnall, J.

Penoyar, J.